

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C.
20508

FOR IMMEDIATE RELEASE
Wednesday, November 22, 1995

Contact: 95-84
Anne Luzzatto
Dianne Wildman
Kirsten Powers
(202) 395-3230

**SUBMISSION BY THE GOVERNMENT OF THE UNITED STATES TO THE
GOVERNMENT OF JAPAN REGARDING DEREGULATION, ADMINISTRATIVE
REFORM AND COMPETITION POLICY IN JAPAN**

Taking into account the Government of Japan's policy to consider the views of interested foreign and domestic parties, the Government of the United States on November 21 officially submitted to the Japanese Government a substantial and detailed paper addressing deregulation, administrative reform and competition policy issues. This 42-page submission, which contains suggestions for deregulation in 12 sectors, is intended to assist the Government of Japan in addressing those issues of greatest importance to the U.S. Government during the Government of Japan's Deregulation Action Plan revision process which is expected to be finalized by March 1996. The U.S. Government previously submitted proposals on these issues to the Government of Japan on November 15, 1994 and April 21, 1995.

In announcing the U.S. submission United States Trade Representative Kantor said, "We have put together a substantive submission which addresses a range of issues relating to deregulation, administrative reform and competition policy. This submission complements our efforts regarding sectoral trade issues and is a continuation of the Administration's trade policy regarding Japan as set forth under the Framework." Ambassador Kantor went on to say, "Meaningful deregulation of the Japanese economy is critical to increasing market access. However to be meaningful, deregulation must be coupled with a firm commitment to increased transparency of administrative procedures and enhanced competition policy enforcement. Meaningful deregulation will also ensure that the Japanese consumers and producers benefit from increased competition, lower prices, better selection and higher quality goods and services."

The U.S. - Japan Framework establishes a working group on deregulation and competition policy. This working group continues to serve as the primary bilateral forum for addressing these issues and the U.S. Government welcomes the opportunity for continued discussions with the Government of Japan within the Framework context.

The U.S. Government submission contains recommendations regarding basic principles and the deregulation process, 12 specific sectors covering over sixty five sub-sectors or concerns, administrative reform, and competition policy enforcement. The U.S. Government anticipates submitting additional proposals on these subjects in the future as required to address the changing dynamic of deregulation in Japan.

Copies of the full U.S. Government submission are available in the USTR Public Affairs Reading Room.

Basic Principles and Process

The United States Government urged the Japanese Government to fully adopt the basic principles articulated in its previous submissions, including a commitment to broad and continuous review; freedom from regulation in principle, with regulation the exception; enhanced transparency and accountability; prohibition of informal delegation of government authority; non-burdensome local regulations; inclusion of sunset provisions in new and revise regulations; and promotion of the market mechanism. The United States continues to believe that full adoption of these principles, taken as a whole, provides the greatest assurance that deregulation in Japan will be meaningful and effective.

Specific Deregulation Proposals

The U.S. Government provided detailed deregulatory suggestions in the following twelve sectors: agriculture; automotive and motorcycles, construction, distribution-related, energy production and delivery, insurance and financial services, investment, legal services, medical/pharmaceuticals, redemption game machines, telecommunications and transportation. The U.S. Government also suggested that additional sectors be added to this list as the changing circumstances of a dynamic deregulatory process dictate.

Administrative Reform

The U.S. Government believes that the lack of transparency in administrative procedures hinders market access and contributes to an environment which discriminates against foreign businesses. The U.S. Government believes that increased transparency and accountability in administrative procedures is integral to effective deregulation. A detailed submission on administrative reform is included in the submission which urges the Government of Japan to undertake a broad range of measures relating to information disclosure and retention; formation and role of advisory committees and study groups; role of industry associations; administrative regulations and procedures; and review of administrative actions.

Competition Policy Enforcement

The U.S. Government believes that strong and vigorous enforcement of the Antimonopoly Act by the Government of Japan is integral to increasing market access and ensuring the effectiveness of deregulatory measures. The United States urged Japan to strengthen the structure and

organization of the Japan Fair Trade Commission (JFTC); enhance the JFTC's investigatory and enforcement powers; prevent anticompetitive practices by trade associations; strengthen coordination between the JFTC and other ministries on proposed administrative guidance; eliminate antimonopoly exemptions; increase efforts to eliminate *dango*; eliminate international contract notification requirements; and improve private remedies against antimonopoly violators.

-30-

Note: The 41-page report is available in the USTR Reading Room, or through the USTR Fax Retrieval System #29027.

**SUBMISSION BY THE GOVERNMENT OF THE UNITED STATES TO THE
GOVERNMENT OF JAPAN REGARDING DEREGULATION, ADMINISTRATIVE
REFORM AND COMPETITION POLICY IN JAPAN**

November 21, 1995

The Government of the United States of America is pleased to submit to the Government of Japan, in the context of the Deregulation and Competition Policy Working Group under the Joint Statement on the United States-Japan Framework for a New Economic Partnership ("Framework"), this submission which addresses specific deregulation, administrative reform and competition policy matters in Japan.

This submission was prepared recognizing that the Government of Japan is currently undertaking the first annual revision of its five-year Deregulation Action Plan ("Plan"), announced on March 31, 1995, and is taking into consideration specific comments from interested domestic and foreign parties. The United States recognizes that the Government of Japan subsequently announced on April 13, 1995 its intention to implement the Plan within three years.

This submission is intended as a broad list of suggestions by the Government of the United States, building on the initial list submitted to the Government of Japan on November 15, 1994 and the comments on Japan's Deregulation Action Plan submitted on April 21, 1995. This submission is not intended to be an exhaustive list of deregulation, administrative reform and competition policy issues in Japan of concern and/or interest to the Government of the United States. As deregulation and liberalization of economic and administrative systems are continuous processes, the United States may from time to time submit additional suggestions and requests to the Government of Japan.

The Government of the United States looks forward to a constructive dialogue with the Government of Japan on deregulation, administrative reform and competition policy, and on the revision of the Plan, in the context of ongoing consultations in the Framework Deregulation and Competition Policy Working Group as well as in other fora.

TABLE OF CONTENTS

I.	BASIC PRINCIPLES	1
A.	BROAD AND CONTINUOUS REVIEW	1
B.	FREEDOM FROM REGULATION IN PRINCIPLE, WITH REGULATION THE EXCEPTION	1
C.	ENHANCE TRANSPARENCY AND ACCOUNTABILITY	1
D.	PROHIBITION OF INFORMAL DELEGATION OF GOVERNMENT AUTHORITY	1
E.	NON-BURDENSOME LOCAL REGULATION	2
F.	INCLUSION OF SUNSET PROVISIONS	2
G.	PROMOTION OF MARKET MECHANISM	2
II.	DEREGULATION PROCESS	2
III.	SPECIFIC DEREGULATION PROPOSALS	3
A.	AGRICULTURE	3
1.	Phytosanitary Quarantine Restrictions	3
2.	Food Additives / Product Standards	3
3.	Feedgrains	4
4.	Racehorses	4
5.	Wood Products	4
B.	AUTOMOTIVE AND MOTORCYCLES	6
1.	Automotive	6
2.	Motorcycles	6
C.	CONSTRUCTION	7
1.	"Common Specifications" (<i>Kyotsu Shiyosho</i>)	7
2.	Standards	7
3.	Product Testing	8
4.	Product Approval / Certification Organs	8
5.	Better Living Mark	9
6.	T-Mark regulations	9
7.	Requirements and Regulations	9
8.	Licensing	9
9.	Study Committees	10
10.	Multi-story and Multi-family Residential Units	10
11.	Working Visas	10
12.	Procurement Procedures for Construction-related Contracts	10
D.	DISTRIBUTION-RELATED	11
1.	Import Processing	11

	2.	Standards and Certification	12
	3.	Distribution and Wholesaling	12
	4.	Retail Distribution	12
	5.	Liquor Distribution	13
	6.	Premiums and Sales Promotions	13
E.		ENERGY PRODUCTION AND DELIVERY	14
	1.	Electrical Equipment	14
	2.	Electric Power Generation, Transmission and Distribution	14
	3.	Petroleum and Related Products, and Natural Gas	14
F.		INSURANCE AND FINANCIAL SERVICES	15
	1.	Insurance	15
	2.	Financial Services	16
G.		INVESTMENT	16
	1.	Access to Land and Facilities	16
	2.	Investment Deregulation	16
	3.	Employment Policies	17
	4.	Mergers and Acquisition	17
H.		LEGAL SERVICES	18
I.		MEDICAL/PHARMACEUTICALS	18
	1.	Reimbursement Approval Process	18
	2.	Clinical Investigation	20
	3.	Product Approval	21
	4.	Gamma Sterilization	21
	5.	Electronic Beam Sterilization	22
	6.	Sterility Assurance	22
	7.	Material Information / Foreign Data	23
	8.	Combination of Medical Device Kit	23
	9.	Transfer of Import Approval / Import License	23
	10.	Business Office Issues	24
	11.	Pharmaceuticals Included in Disposable Medical Device Kits ..	24
	12.	Product Dimensions in Applications for Approval	24
	13.	Soft Contact Lens Disinfection Method	24
J.		REDEMPTION GAME MACHINES	25
K.		TELECOMMUNICATIONS	25
	1.	Market Entry/Rate Regulation	25
	2.	Interconnection	25
	3.	Transparency	27
	5.	Cable TV	27
L.		TRANSPORTATION	28
	1.	Freight Transportation	28
	2.	Maritime	28
	3.	Aircraft / Airports	29
M.		OTHER	30

IV.	ADMINISTRATIVE REFORM	30
A.	INFORMATION DISCLOSURE AND RETENTION	30
B.	ADVISORY COMMITTEES AND STUDY GROUPS	31
C.	INDUSTRY ASSOCIATIONS	32
D.	ADMINISTRATIVE REGULATIONS AND PROCEDURES	32
E.	REVIEW OF ADMINISTRATIVE ACTIONS	34
V.	COMPETITION POLICY	36
A.	STRENGTHEN THE STRUCTURE AND ORGANIZATION OF THE JFTC	36
B.	ENHANCE THE JFTC'S INVESTIGATORY AND ENFORCEMENT POWERS	37
C.	PREVENT ANTICOMPETITIVE PRACTICES BY TRADE ASSOCIATIONS	38
D.	STRENGTHEN COORDINATION BETWEEN THE JFTC AND OTHER MINISTRIES ON PROPOSED ADMINISTRATIVE GUIDANCE	39
E.	ELIMINATE ANTIMONOPOLY EXEMPTIONS	39
F.	INCREASE EFFORTS TO ELIMINATE <i>DANGO</i>	40
G.	ELIMINATE INTERNATIONAL CONTRACT NOTIFICATION REQUIREMENTS	41
H.	IMPROVE PRIVATE REMEDIES AGAINST ANTIMONOPOLY VIOLATORS	41

I. BASIC PRINCIPLES

The Government of the United States reaffirms the basic principles laid out in its submission to the Government of Japan of November 15, 1994. The United States continues to believe that effective deregulation in Japan will enhance competition; provide greater market access for foreign goods, services and investment; provide greater benefits to Japanese consumers, producers and service providers through enhanced efficiency, lower prices and greater product and service choice and availability in the marketplace.

Although the Plan incorporates some aspects of these principles, the Government of the United States urges the Government of Japan to extend its commitment to deregulation by adopting fully the following principles:

A. BROAD AND CONTINUOUS REVIEW

All regulations in Japan, whether formal or informal, or whether characterized as social or economic in nature, should be reviewed. This review should be conducted on a continuous basis.

B. FREEDOM FROM REGULATION IN PRINCIPLE, WITH REGULATION THE EXCEPTION

The review of regulations should consider whether the regulations are broader or more burdensome than necessary to achieve their legitimate objectives. Regulations that remain in force should be closely and directly linked to recognized public policy interests such as protection of health, safety or the environment; protection of national security; or protection of consumers against deception.

C. ENHANCE TRANSPARENCY AND ACCOUNTABILITY

Regulations should be based on the principles of transparency and non-discrimination, and regulatory officials should be clearly accountable for their actions. All formal and informal regulations should be in writing and published in publicly-available sources. The specific government entities and officials responsible for the implementation of such regulations should always be clearly identified. Changes to new and existing regulations should be disclosed in advance, with ample opportunity provided for public comment.

D. PROHIBITION OF INFORMAL DELEGATION OF GOVERNMENT AUTHORITY

Indirect, *de facto* regulation by quasi and non-governmental entities, including

nonprofit organizations, *tokushu-hojin*, and industry associations should be strictly prohibited if not based on formal and transparent delegation of authority authorized by the Diet.

E. NON-BURDENSOME LOCAL REGULATION

Local governments should be encouraged to take measures similar to the Plan to review and eliminate unnecessary and burdensome local regulations, where appropriate. Guidelines prohibiting institution of new local regulations that would have the effect of negating or undermining, in whole or in part, deregulatory efforts at the national level should also be adopted.

F. INCLUSION OF SUNSET PROVISIONS

Sunset provisions, which specify a fixed lifetime of a particular regulation, should be included, where appropriate, in regulations issued in the future. Sunset provisions should also be incorporated into existing regulations as reviewed.

G. PROMOTION OF MARKET MECHANISM

The market mechanism, supplemented by an active and effective antimonopoly enforcement policy, should be relied upon to determine the best and most efficient allocation of resources and the success or failure of individual firms. Private practices that unfairly restrict competition should not be allowed to replace or supplement official regulation.

II. DEREGULATION PROCESS

The United States Government believes that deregulation must be a dynamic process if it is to be responsive to changing circumstances. To this end, the Government of the United States recommended to the Government of Japan in the submission of November 15, 1994 that the Plan contain provisions for a private sector participation mechanism, periodic solicitation of public comments, the issuance of a directive to protect private firms and individuals that provide comments from harassment and retaliation, and annual deregulation reports.

The Government of the United States recognizes the commitment made by the Government of Japan to a dynamic deregulation process. In carrying out this commitment it is important that responsible officials ensure that the *tatema*i, or visible aspects of the deregulatory process, be conceived, implemented and reviewed based on the fundamental *honne*, or philosophical principles, articulated above. It is only through faithful and full implementation of the principles that meaningful deregulation will occur.

III. SPECIFIC DEREGULATION PROPOSALS

A. AGRICULTURE

1. Phytosanitary Quarantine Restrictions

Non-scientific based phytosanitary policies continue to restrict or overly regulate imports of many fresh agricultural products in Japan. In particular, these barriers present major obstacles to imports of fresh fruits, vegetables, and other horticultural products to Japan. While progress has been made in a variety of specific instances, the Government of Japan should develop a more systematic approach in keeping with the WTO sanitary-phytosanitary commitments and, therefore, should:

- a. Eliminate the routine and redundant requirements for Ministry of Agriculture, Forestry and Fisheries (MAFF) inspectors in on-site inspection during pre-clearance programs, and reduce the number of MAFF inspectors required;
- b. Eliminate the policy requiring rejections and/or treatment of shipments when cosmopolitan or non-quarantine pests or organisms are found during import inspection. Such treatments often destroy the quality of imported products without foundation in plant protection;
- c. Eliminate the unnecessary and overly restrictive application of testing procedures for all varieties of an already approved fruit to be exported to Japan. Currently, for some fruits – such as apples, cherries, and nectarines – each and every variety must be tested for mortality of the pests in the approved treatment, causing long delays (often years) while Japanese inspectors rear the insect pests and conduct tests. There is no evidence to show that one variety reacts differently from another variety of the same fruit; and
- d. Accept U.S. manufacturers self-certification of conformance to foreign product standards, in particular test results for aflatoxin in peanut butter.

2. Food Additives / Product Standards

The "positive list" for acceptable food additives and the lack of transparency in Japan's process for approving new food additives are of particular concern. The Government of Japan should:

- a. Eliminate restrictive application of "use standards" for food additives that are "Generally Recognized as Safe" (GRAS) for human consumption. For

example, the application of standards for additives such as *potassium sorbate*, *sorbic acid*, *benzoic acid*, and *sodium benzoate* in such products as light mayonnaise and creamy mustard is inconsistent; and

- b. Accept U.S. manufacturers self-certification of conformance to foreign product standards.

3. Feedgrains

The Government of Japan's attempts at partial reform of corn and barley import systems have been useful and appreciated by U.S. industry, but the lack of price transparency in these systems, costly inspection fees, and new documentation requirements for participation limit domestic livestock producers' choices, reducing competitiveness. This has a significant impact on purchases of U.S. corn and barley. The Government of Japan should:

- a. Revise the point system for mixed feed blending requirements so as not to limit Japanese livestock producers' ability to choose imported grains and mixed feed products.

4. Racehorses

The United States has requested that Japan further liberalize access for foreign horses. The Government of Japan should:

- a. Eliminate remaining restrictions limiting participation of foreign horses in Japanese horse races; and
- b. Open horse owner registration to foreigners. Currently only Japanese residents may register with the Japan Racing Association as racehorse owners.

5. Wood Products

With regard to wood products, the Government of Japan should:

- a. Increase acceptance of foreign building materials and construction methods by:
 - i. Simplifying and expediting the process for gaining approval to use new or innovative building materials and construction methods in Japan under Article 38 of the Building Standard Law;

- ii. **Expediting the recognition of foreign testing laboratories and evaluation bodies for building materials and construction methods, and the acceptance of foreign test data on an equivalency basis with Government of Japan codes and standards such as those of the Building Standard Law and Government Housing Loan Corporation (GHLC) standards;**
 - iii. **Expediting the acceptance of foreign building materials and construction methods, such as U.S. grade marked lumber and plywood, U.S. standard nails and U.S. nailing guns;**
 - iv. **Increasing the transparency of the processes for obtaining Japanese Agricultural Standard (JAS) and Foreign Testing Organization (FTO) certification;**
 - v. **Expediting the approval process for obtaining certification; and**
 - vi. **Allowing FTOs to qualify member companies to affix the JAS mark.**
- b. Increase the use of wood building materials and construction methods by:**
- i. **Expediting a review of the Building Standard Law and the adoption of performance-based building standards to allow increased use of wood building materials and construction methods;**
 - ii. **Revising the requirements for three-story wood-frame construction (quasi-fire protection districts), four-story wood-frame construction (outside fire protection districts), interior wood finishes, wood doors and windows, exterior siding, and roofing materials to reflect advances in technology and changes in construction practices;**
 - iii. **Expediting a review of the methodology for calculating design values for construction materials;**
 - iv. **Revising the compulsory standards of the GHLC to allow the use of wood materials and construction systems where these materials and systems provide levels of performance and safety equivalent to, or superior to, those specified in the Building Standard Law; and**
 - v. **Permitting the use of moveable scaffolding, or no scaffolding, in low-rise construction, i.e., two stories or less.**

B. AUTOMOTIVE AND MOTORCYCLES

1. Automotive

The U.S.-Japan automotive agreement, negotiated under the auspices of the Framework Agreement, represents a major commitment by the Government of Japan to deregulation in this important sector. The Government of the United States appreciates and welcomes these commitments by the Government of Japan. The automotive agreement calls for the Government of Japan to conduct a review of the parts replacement operations within the scope of the so-called "critical parts list." This review is to be conducted with a view toward removing from the list all parts and replacement operations that are not necessary from the standpoint of safety and environmental protection. Deregulation of the critical parts list is crucial to further expanding options for Japanese consumers and opportunities for foreign parts suppliers regarding the Japanese auto parts replacement market.

The agreement also calls for the Government of Japan to create specialized certified garages and special designated garages in order to further create opportunities and competition in the auto repair business in Japan. The Government of Japan should implement these measures as called for in the agreement, and should accelerate the time-frame for implementation to the greatest extent possible.

Finally, the Government of Japan should address the outstanding automotive standards and certification issues identified in the agreement within the timeframe set in the agreement, or nine months from August 23, 1995.

2. Motorcycles

The Japanese Government, through the National Police Agency, has restrictive regulations on motorcycles that inhibit sales, especially of foreign motorcycles, and are not in accordance with international norms. Based on the recommendations made by the Office of the Trade and Investment Ombudsman (OTO), the Government of Japan should undertake the following deregulation measures:

- a. Remove the severe restrictions on testing for operator licenses on large class motorcycles (greater than 400cc) by October 1996, as announced by the National Police Agency;
- b. Retain the current age requirements for operator licensing;
- c. Equalize speed limits for motorcycles and automobiles on highways; and
- d. Remove the prohibition on tandem riding on highways, especially for large class motorcycles.

C. CONSTRUCTION

The Government of Japan should adopt internationally recognized standards and practices. In particular, with respect to the following items, the Government of Japan should:

1. "Common Specifications" (Kyotsu Shiyosho)

- a. Develop unified national "common specifications" with a view toward enhancing the use of foreign materials. Materials that meet or exceed these "common specifications" should also be promoted;
- b. Allow for incorporation of new product characteristics into the "common specifications" at any time;
- c. Actively seek and include foreign products into the "common specifications;" and
- d. Revise "common specifications" to permit the use of Japan Industrial Standards (JIS) or JAS equivalent products.

2. Standards

- a. Develop and apply performance based standards. In particular, revise JAS standards which are overly appearance-based and not sufficiently based on structural performance;
- b. Revise Japanese standards to reflect international standards;
- c. Recognize as meeting Japanese standards those foreign products that meet equivalent foreign standards;
- d. Streamline and simplify JIS and JAS approval procedures;
- e. Revise water standards so that backflow prevention valves will not be required in order to obtain approval to connect equipment to the local water system;
- f. Revise gas standards so that cut off devices will not be required within a piece of equipment in order to obtain approval to install such equipment where public safety is not adversely impacted;

- g. **Revise fire standards and streamline related certification procedures to allow for the use of ventless exhaust hoods in commercial projects and for greater use of wooden doors and windows;**
- h. **Accept U.S. grading standards for lumber, plywood, and other engineered wood;**
- i. **Eliminate the requirement for a JAS stamp on structural lumber used in government-financed housing projects;**
- j. **Permit the use of U.S.-standard nails, U.S. nailing guns, other metal connectors, and nailing patterns and pitch intervals;**
- k. **Accept U.S. standards and testing for home gas furnaces;**
- l. **Accept U.S. standards and testing for ceiling tiles;**
- m. **Accept U.S. standards and testing for drywalls; and**
- n. **Accept U.S. fire standards and testing, and simplify related certification procedures.**

3. Product Testing

- a. **Expand recognition by the Ministry of Construction and other relevant agencies of foreign testing centers authorized to perform testing of materials and equipment;**
- b. **Recognize foreign test data for building materials and equipment; and**
- c. **Review and revise Guidelines for Accepting Test Results with the view to reducing the burdens placed on foreign firms and manufacturers, and eliminate the need for firms to make repeat test.**

4. Product Approval / Certification Organs

- a. **Make transparent the process for listing products on the Approved Products Lists, and provide for automatic inclusion on all Approved Products Lists of goods which have obtained JIS, JAS or equivalent approvals;**

- b. Expedite and simplify the Japan Waterworks Association (JWWA) approval process, ensure that JWWA approval procedures permit U.S.-specification plumbing fixtures and rough-plumbing, or allow Japanese-specification plumbing fixtures and rough plumbing without the JWWA seal (self-certification);
- c. Expedite and simplify the approval process of product evaluation and verification organs, such as the Public Works Center, Public Buildings Association, and Center for Better Living; and
- d. Expedite, rationalize, and simplify the Building Standard Law Article 38 certification approval process.

5. **Better Living Mark**

- a. Eliminate the requirement that stipulates the Better Living (BL) mark for products used in all government housing projects; and
- b. Eliminate the preference by GHLC for products with the BL mark.

6. **T-Mark regulations**

- a. Accept U.S. standards and testing results for electrical equipment and wiring.

7. **Requirements and Regulations**

- a. Eliminate local registration requirements that prohibit non-local firms from doing local work without a local "sponsor;"
- b. Eliminate scaffolding requirements, or permit moveable scaffolding, in residential and low rise construction; and
- c. Revise the chemical regulations under the Building Standards Law to permit gluing of appropriate products.

8. **Licensing**

- a. Promote greater use of procurement of goods by separating procurement of goods from installation services so that good suppliers without construction licenses can participate in the bidding process;
- b. Permit wider licensing of electrical and plumbing contractors; and

- c. Simplify and expedite construction license application procedures by reducing document requirements.

9. Study Committees

- a. Provide more foreign participation in and access to study committees related to construction.

10. Multi-story and Multi-family Residential Units

- a. Relax regulations that excessively restrict the size and potential locations of buildings; and
- b. Permit U.S. specification light-gauge steel framing for residential use.

11. Working Visas

- a. Expedite the processing of skilled worker visas so that a visa can be granted within 2-3 weeks;
- b. Make standards for skilled worker visas more transparent by disseminating directives to immigration offices to ensure smooth visa approval and entry of workers with requisite construction experience and documentation; and
- c. Clarify for Japanese companies the visa standards and the feasibility of hiring foreign workers.

12. Procurement Procedures for Construction-related Contracts

- a. Facilitate distribution of solicitation packages and other procurement related information by allowing the use of electronic retrieval systems, e.g. Internet, fax on demand system;
- b. Expand the time frame between announcement of the procurement notice and the deadline for bid submission. Count only working days, ie., exclude holidays and weekends, in the time period;
- c. Revise definitive criteria to be performance-based and less restrictive;
- d. When developing definitive criteria, commissioning entities should indicate that experience on comparable projects meet the criteria;

- e. Extend the time frame for consideration of a firm's past work experience from five to ten years;
- f. Include ongoing projects as part of a firm's past work experience to determine a firm's qualifications;
- f. Allow a firm's experience as a Project / Program Manager or a Construction Manager (PM / CM) to be considered when evaluating a firm's qualifications;
- g. When evaluating a firm's qualifications to participate in a bid, commissioning entities should consider a firm's experience on comparable projects;
- h. Eliminate restrictions on the formation of joint ventures; and
- i. Develop a unified set of minimum business evaluation scores for use as a pre-qualification requirement.

D. DISTRIBUTION-RELATED

The Government of Japan should take dramatic steps to further deregulate the distribution sector in Japan with respect to the following issues:

1. Import Processing

- a. Create a system for computerized, paperless import processing which ties in all relevant Japanese Government agencies to permit parallel processing of applications by all concerned agencies;
- b. Institute appropriate fees for use of the new Narita Airport air cargo terminal to encourage its use and facilitation of speedier on-site processing of air cargo;
- c. Continue efforts to encourage the use of pre-filing procedures;
- d. Significantly increase pre-arrival review by Customs and other Government of Japan entities, and clearance upon arrival for air cargo and small package express;
- e. Simplify and expand inspection services for import clearance of foodstuffs; and

- f. Ensure that customs regulations are applied uniformly, and are as specific as possible.

2. Standards and Certification

- a. Systematically review all standards and certification procedures to ensure that they conform to appropriate international norms; and
- b. Implement immediately the OTO recommendations, and where appropriate, take additional steps regarding the list of items related to standards and certification submitted by the United States Government and other organizations.

3. Distribution and Wholesaling

- a. Ensure adherence by the Japanese business community to the Ministry of International Trade and Industry's (MITI) 1990 Guidelines on Business Practices to promote a free, transparent, and competitive distribution system; and
- b. Reduce significantly the restrictions on entry into the warehouse industry, including licensing and notification requirements, with the goals of abolishing restrictions, reducing shortages of storage space, lowering high fees and minimizing burdens for foreign firms related to the distribution of their products.

4. Retail Distribution

- a. Phase out the Large Scale Retail Store Law (LSRS) with elimination by the end of JFY 2000 and take appropriate measures to prevent local jurisdictions from introducing new restrictions on large scale stores;
- b. Eliminate in JFY 1996 all restrictions under the LSRS on operations of existing stores, including permitted hours of operations and number of days closed;
- c. Pending elimination of the LSRS law, expedite the processing of large scale retail store applications by, among other things:
 - i. Providing for concurrent processing of store applications by local and prefectural authorities;

- ii. Reducing the number of licenses required to open new stores; and
- iii. Enabling earlier construction of large-scale stores by reducing delays resulting from MITI processing of the notification and compliance with local prefectural zoning, licensing and traffic regulations.

5. Liquor Distribution

- a. Ease regulations affecting entry into and the operation of liquor distribution businesses.

6. Premiums and Sales Promotions

- a. Revise the Japan Fair Trade Commission's (JFTC) Premium Regulations affecting consumer premiums and open lotteries by the end of JFY 1995 by:
 - i. Increasing the limit on the maximum value of a premium to 30% of the value of the main product;
 - ii. Permitting service providers and retailers to make open lottery entry forms available in their retail establishments, provided no purchase is required in order for a consumer to obtain the entry form;
 - iii. Eliminating to the maximum extent possible, restrictions on manufacturers or service providers placing their open lottery entry forms in affiliated retail shops, franchises or establishments that carry their products; and
 - iv. Clarifying the JFTC's policy on permissible discount coupons.
- b. Fair Competition Codes
 - i. In order to prevent existing Fair Competition Codes from undermining the JFTC's deregulation of its premiums rules, ensure that all Codes are revised by the end of JFY 1996 to be no more restrictive than the JFTC's general notifications; and
 - ii. Amend Section 10 of the Act Against Unjustifiable Premiums and Misleading Representations to eliminate the JFTC's ability to authorize entrepreneurs or associations to establish Fair

Competition Codes or other similar agreements, and to eliminate the exemption of such codes or agreements from the Antimonopoly Act.

E. ENERGY PRODUCTION AND DELIVERY

While recognizing recent reforms, including the reform of the Electricity Utilities Industry Law (*Denki Jigyoho*), the Government of Japan, in order to reduce energy costs and pass on the benefits of the yen appreciation to Japanese consumers and business, should:

1. Electrical Equipment

- a. Revise the MITI Technical Standards so that equipment that meets U.S. ANSI/ASTM standards can be used by electric utilities;
- b. Abolish the requirement that U.S. equipment meeting ANSI/ASTM standards must also meet the standards established by the MITI ordinance Technical Standards (TS), Japan Industrial Standards (JIS), and Japanese Electro-technical Committee (JEC); and
- c. Modify JIS standards to take into account current improvements in materials and technology.

2. Electric Power Generation, Transmission and Distribution

- a. Ensure that the implementing ordinances of the recently revised Electricity Utilities Industry Law (*Denki Jigyoho*) provide for full, fair and non-discriminatory participation by foreign firms in the electric power generation, transmission and distribution market in Japan; and
- b. Periodically review the effectiveness of liberalization efforts in introducing increased competition into the electric power generation, transmission and distribution market.

3. Petroleum and Related Products, and Natural Gas

The United States Government looks forward to consulting with the Government of Japan regarding specific deregulation measures in Japan relating to: (1) the production and delivery of petroleum and related products; and (2) natural gas delivery and use.

F. INSURANCE AND FINANCIAL SERVICES

1. Insurance

The United States-Japan insurance agreement, negotiated under the auspices of the Framework Agreement, calls for the Government of Japan to undertake a broad range deregulatory and competition policy measures with regard to the insurance sector, including measures relating to the distribution and purchase of insurance within “*keiretsu*” groupings, deregulation of the “third sector” and a variety of measures related to transparency. The U.S. Government's focus, in the near term, will be on the effective implementation of this agreement.

In addition, the Government of Japan should undertake the following regulatory and competition policy actions:

- a. Establish solvency and other policyholder protection requirements that do not unfairly disadvantage small or foreign insurance providers or insurance providers organized as branches;
- b. Ensure that the activities of self-regulatory organizations (SRO's) are conducted in an open, non-discriminatory and transparent manner as called for in the agreement. In particular, ensure that the administration of the proposed Policyholder Protection Funds by the Japan Nonlife Insurance Association and the Life Insurance Association of Japan do not discriminate against foreign insurers and smaller insurers;
- c. Facilitate and encourage the establishment of an insurance sales and distribution system in Japan that allows and enhances an innovative and competitive insurance market, and ensures that brokers are not burdened with unnecessary or excessive financial requirements;
- d. Prohibit government entities such as the Ministry of Posts and Telecommunications from providing insurance services that compete directly with private insurance companies;
- e. Ensure that public corporations that allocate insurance to participating private insurance companies do so on a fair, transparent, non-discriminatory basis; and
- f. Ensure that the Ministry of Finance, and any other insurance regulatory agency, has sufficient staff and resources to carry out policies to

deregulate and provide for an innovative and competitive insurance market.

2. Financial Services

In the area of financial services, the United State Government's deregulation priorities are contained in the U.S.-Japan financial services agreement negotiated under the auspices of the Framework Agreement. The United States Government's focus, in the near term, will be on the effective implementation of this agreement.

Further regulatory reform of Japan's financial markets would increase competition, helping improve Japan's long-term growth prospects.

G. INVESTMENT

1. Access to Land and Facilities

The relatively high price and limited availability of land and facilities in Japan is a major obstacle to foreign direct investment in Japan. The availability of land for commercial and residential use would likely increase if regulatory distortions were reduced. The Government of Japan, therefore, should:

- a. Make all Government of Japan plans to revitalize real estate transactions market-oriented, and allow foreign firms equal access to available land;
- b. In keeping with the Government of Japan's intention to comprehensively examine taxes on land, as noted in the economic stimulus package, reduce the capital gains tax on land sold after less than five years of ownership; and
- c. Increase efforts to relax zoning restrictions on land use, especially where they have the effect of reducing land availability for commercial and residential use.

2. Investment Deregulation

- a. Eliminate prior approval and other restrictions on foreign direct investment in restricted sectors, including mining; and
- b. Work with other partners to secure a multilateral agreement on investment that would go beyond existing commitments to achieve a high standard of liberalization and apply discipline to areas not satisfactorily covered by present OECD disciplines.

3. Employment Policies

Foreign firms face many challenges in hiring and retaining qualified Japanese workers and in employing foreign executives in Japan's high-cost business environment. Under the Employment Security Law, the Japanese government tightly regulates non-governmental employment services through a complex system of regulations. Burdensome regulations also impede the ability of foreign investors to provide employment services. To liberalize the employment services regulatory structure, the Government of Japan should:

- a. Extend private employment services licenses to five years;
- b. Ensure that the Ministry of Labor provides information on licensing upon request;
- c. Remove restrictions on private employment service fees so that the market determines the fees;
- d. Remove restrictions on the employment categories and job classifications which limit the business activities of private employment agencies;
- e. Eliminate restrictions on advertising by private employment services; and
- f. Eliminate the requirement that private employment services divulge to the Government of Japan the names of clients and job candidates, except where there are suspected illegal activities.

4. Mergers and Acquisition

To increase the low level of foreign participation in merger and acquisition activity in Japan, the Government of Japan must continue to encourage a positive climate for such transactions. Among other things, every effort must be made to identify and eliminate unnecessary legal and regulatory barriers to mergers and acquisitions involving foreign bidders, and to ensure that private anticompetitive behavior is not an obstacle to mergers and acquisitions. In particular, the Government of Japan should:

- a. To the maximum extent possible, strengthen and harmonize Japanese accounting standards with international standards, including providing for clear accounting standards for unfunded liabilities;
- b. Ensure that external audits on publicly-held firms are readily available to the public upon request;

- c. Significantly reduce the capital gains tax on the appreciated stock values for the shares of a company involved in a merger or acquisition, including between a Japanese company and a foreign company; and
- d. Continue to ease and rationalize requirements for firms to list on the over-the-counter (OTC) market.

H. LEGAL SERVICES

- 1. In view of the fact that foreign lawyers play a vital role in facilitating inward transactions and trade into Japan, the Government of Japan should further liberalize restrictions on activities of foreign lawyers in Japan, including restrictions on *Gaikikuhō jimubengoshi*. More specifically, the Government of Japan should:
 - a. Eliminate all restrictions on the ability of foreign lawyers to represent parties in international arbitrations conducted in Japan;
 - b. Eliminate the restrictions on partnerships or employment arrangements between foreign lawyers and *bengoshi*, and between foreign lawyers and other legal professionals in Japan;
 - c. Allow foreign lawyers to count all legal experience, regardless of where that experience was obtained, toward the 5-year experience requirement for qualification as a *Gaikukuhō jimubengoshi*; and
- 2. Double the number of seats in the Legal Research and Training Institute within the near term.

I. MEDICAL/PHARMACEUTICALS

1. Reimbursement Approval Process

In order to speed the process of reimbursement for medical device products, and make available life-saving and life-enhancing technologies to patients in a more timely fashion, the Ministry of Health and Welfare (MHW) should take the following steps:

- a. Update the reimbursement schedule for medical technology on a continuous basis, as opposed to the current process of doing so only every two years, in order to reflect the continual advances in medical technology;
- b. Require the Health Insurance Bureau to begin its review of products for

reimbursement coverage as soon as the manufacturer submits an application for product approval to the MHW;

- c. Allow new medical devices to be regularly introduced into the national health insurance system four times a year within six months after *shonin* approval;
- d. Offer manufacturers the option of receiving a provisional price until the reimbursement review is completed and a permanent price is established, when the MHW cannot finalize a reimbursement decision on a newly-approved product within three months of product approval. The provisional price should be equal to the price of the technology being replaced and a specific time limit should be established during which a final reimbursement decision will be made;
- e. Establish a standard processing period for reimbursement applications for "class c" medical devices; inform manufacturers whose applications cannot be processed within this period and provide them with the reasons for the delay; and develop a flowchart to more clearly define reimbursement review and price decision procedures;
- f. Offer expedited reimbursement treatment for products that medical technology manufacturers can show reduce overall health care system costs, e.g., technologies that reduce the incidence of hospital readmittance, technologies that allow care to take place in less expensive settings such as the home, technologies that reduce the number of hospital days required for a given procedure;
- g. Provide for a more open and transparent Highly Advanced Medical Technologies (HAMT) system. Companies whose products are subject to HAMT clearance need to be provided with the: 1) precise definition of the criteria that are the basis for reimbursement decisions; 2) established timetables for processing an item through the system; 3) a full accounting of products rejected for reimbursement at the conclusion of the HAMT process; and 4) reimbursement of products during the HAMT review process. These actions should be taken in the interim with the ultimate objective of abolishing the HAMT system; and
- h. Abolish the price control system for Special Treatment Materials (STMs). While U.S. industry is committed to working with the MHW toward the effective functioning of the price control regime governing STMs, current efforts to expand this system run counter to the stated Japanese Government policy of economic deregulation.

2. Clinical Investigation

- a. Exempt medical devices approved by foreign governments based upon clinical data with confirmed safety and effectiveness from supplementary clinical investigation in Japan;
- b. Eliminate the requirement for collection of clinical trial data in Japan for transplantable medical devices for which foreign clinical trials have already been conducted if: 1) no affect on bio-compatibility is shown by the foreign clinical, animal or other data; or 2) a similar type of transplantable medical device has previously been approved in Japan;
- c. Approve applications for a partial change in approved items (*ichihen*) for an orthopedic implant without clinical trials if; 1) the material, including the surface coating, is the same as existing products produced by the same manufacturer, and 2) the non-clinical data are not significantly different from the data for existing products that have already been approved;
- d. Eliminate all requirements for clinical trials except as part of the product approval process;
- e. Permit further clinical trials of *in-vitro* diagnostics after submission for approval;
- f. Allow outside companies to do testing of *in-vitro* diagnostics after submission for approval to MHW; and
- g. Eliminate the requirement for clinical study data for approval application file if a medical device is not obviously different from existing approved devices on the usage, efficacy, effectiveness or performance (new medical devices based on the new classification by the Pharmaceutical Affairs Law); specifically, amend item 20, subpart 3 from *Yakki* Notification No. 232 from the Medical Devices Division of the Pharmaceutical Affairs Bureau of MHW to allow a partial change to an approved file, or a new filing without submitting clinical data; and waive the submission of clinical data where the structure, raw material and performance of a medical device remain the same, and as such the clinical utility of such device, as proven in previously approved filings, remains unaltered.

3. Product Approval

- a. Reduce the "time clock" or standard processing period for approvals of drugs, medical devices and cosmetics from those agreed to under the Market Opening Sector Specific Agreement (MOSS) to the following timetable:

	<u>MOSS Agreement of January 1986</u>	<u>New Request</u>
New drugs	18 months	12 months
"Me-too" drugs	24 months	12 months
Over the counter drugs	10 months	6 months
In-vitro	6 months	3 months
Quasi drugs	6 months	3 months
Medical devices	12 months	6 months
"Me-too" devices	4 months	2 months
Cosmetics	3 months	2 months

- b. Apply the above time clock to applications for *shonin* approvals of drugs and devices for animal use, which are examined by the Ministry of Agriculture, Forestry and Fisheries; and
- c. Abolish prohibitions against non-drug use of hard gelatin capsules.
- d. Permit dentists to import "dental gloves" for personal use without being required to obtain a *shonin* approval;

4. Gamma Sterilization

- a. Deregulate the dose setting criteria (set by MHW) in gamma sterilization for *shonin* approval of medical devices and allow doses at 15 kGy as MHW has done in earlier cases; and clarify the dose setting criteria in an official document that harmonizes these criteria with those of the United States and Europe; and

- b. Approve sterilization doses below 25 kGy without referral to the Subcommittee on Sterilization; and if MHW can confirm that gamma sterilization is conducted in accordance with AAMI guidelines, accept the gamma sterilization as meeting MHW regulations.

5. Electronic Beam Sterilization

- a. Eliminate the requirement that electronic beam sterilization be examined by the Survey Committee;
- b. Allow acceptance of sterilization methods based upon AAMI/ISO Guideline of Electron Beam Sterilization in addition to the current standard;
- c. Require regular public disclosure of data with regard to materials, including packaging materials, which have already undergone deterioration tests in an appropriate dose range of radiation;
- d. Adopt dosimetric release where a device is released without a sterility test as the sterility dose is controlled based on pre-evaluation; and
- e. Establish clearer guidelines governing regulation of electron beam sterilization, by deleting ill-defined expressions such as "etc" from regulations, and make modifications to existing guidelines such as the following:
 - i. Type of Electron Accelerator: "specifications including maximum acceleration voltage, etc." should be replaced by "specifications including maximum acceleration voltage, output, and beam current;" and
 - ii. In the guideline on Comparative Test on Material Deterioration, "characteristics, mechanical properties, etc.", and in the guideline on New Packaging Material, "the stability shall be clearly explained with data on deterioration test, change on standing, etc.," the underlined words should be replaced with specific requirements.

6. Sterility Assurance

- a. Evaluate medical devices that require a "sterility test" in the application based on the "sterility test," or "sterility assurance" through process validation; and

- b. Eliminate the product sterility test on disposable medical devices sterilized by ethyleneoxide gas when the manufacturer has validated sufficiently the process of sterility assurance of the product according to Medical Devices Good Manufacturing Practice (*Shorei* #40).

7. Material Information / Foreign Data

- a. Reduce the scope of information MHW requires for *shonin* applications on materials used in medical devices so firms need not provide details on ingredients, composition and molecular structure for the materials of polyvinyl chloride, polyurethane, natural rubber and latex, and allow alternate information to be substituted, including:
 - i. Vendor's statement of inability to disclose the information due to its confidentiality; and
 - ii. Registration numbers of materials provided to public standards institutes in Japan or foreign countries;
- b. Accept vendor's direct communication with MHW through fax or other communication method;
- c. Eliminate requirements for approval precedents and safety data for raw materials that comply with recognized national standards, i.e., JS, ASTM, ANSI, ISO and BS; and
- d. Require tests of raw materials only at the time of application for *shonin* approval.

8. Combination of Medical Device Kit

- a. For the original *shonin* application for kit products consisting of a combination of already approved products, limit *shonin* requirements to identifying kit components and their *shonin* numbers rather than identifying all combinations.

9. Transfer of Import Approval / Import License

- a. Allow firms to issue an advance notice to their customers and the public, that a notification of an import approval / import license transfer from one firm to another has been submitted to Japanese government regulators;

- b. Reduce the three-month time period currently required for advance notification of a license transfer from one firm to another; and
- c. Eliminate the requirement that firms must wait until the license is transferred before they may notify customers of a change in status.

10. Business Office Issues

- a. When an importer moves business locations, accept notification by MHW one day before the move and without need for a new importers license.
- b. Eliminate any existing requirements that a company must have a pharmacist at each sales office to handle *in-vitro* diagnostics.

11. Pharmaceuticals Included in Disposable Medical Device Kits

- a. Approve applications to MHW for kit products by either the manufacturer (importer) of the drug component of the kit, or the manufacturer (importer) of the device component of the kit, and allow the applicant to merely cite *shonin* approval numbers of the components not manufactured by the applicant.

12. Product Dimensions in Applications for Approval

- a. Exclude medical implant products from the requirements for a partial change application where slight modifications in the dimensions of product are made, if these changes do not affect the structure of the product, the size of the product is simply fitted to the individual patient and the performance, efficacy, effects and safety are not degraded; and
- b. For approval applications, admit the statement of dimensions within practical ranges for modification without need for a partial change application.

13. Soft Contact Lens Disinfection Method

- a. Exempt soft contact lens disinfectant solutions from the reexamination requirement which currently is mandated three years after *shonin* approval.

J. REDEMPTION GAME MACHINES

The Government of Japan should immediately lift the ban on and establish a liberal environment for the operation of redemption game machines, i.e., game machines that dispense tickets that can be redeemed for small prizes of limited monetary value.

K. TELECOMMUNICATIONS

The U.S. government shares Japan's interest in having the most competitive telecommunications market develop through the relaxation of requirements for new competitors. The United States notes the progress made on deregulation in the telecommunications sector in Japan, and urges the Government of Japan to continue to deregulate this important sector. The task before the Government of Japan is to foster competition that is market-driven, rather than dictated by government administration.

1. Market Entry/Rate Regulation

The Government of Japan's efforts should continue to work toward achieving a regulatory regime that relies on competitors to determine what, when and at what prices to bring services to the market. Such a regime is far more effective in promoting competition than one in which the regulator makes such determinations, based on the incumbent's prices and current ability to provide new services. Therefore the Government of Japan should:

- a. Lift all government measures that have the effect of limiting foreign investment in basic telecommunications facilities and services;
- b. Delineate local presence and facilities establishment requirements, financial and tax criteria, and any limitation in services offering;
- c. In licensing new entrants, eliminate measures which handicap these new competitors and minimize their effectiveness in competing against incumbents; and
- d. Ensure that licensing conditions are transparent, objective and non-discriminatory, so that new conditions are not imposed while the authorization is pending that would hamper the ability of the new entrant to compete.

2. Interconnection

As the United States stated in its comments to the Ministry of Post and Telecommunications (MPT) in June 1995, fair and economical interconnection is

essential to the successful functioning of a competitive telecommunications market. The U.S. Government is pleased that NTT has announced its intention to open its local network through providing interconnection, but would again caution the Government of Japan that objective and effective government oversight is necessary to ensure a regime that promotes competition. The plans announced by NTT to date would not result in a competitive regime. To create an interconnection regime more supportive of competition, the Government of Japan should:

- a. Ensure that government oversight includes a reasonably short, e.g., approximately two or three months, negotiation period after which a new competitor can rely on MPT intervention to resolve an impasse effectively;
- b. Require NTT to provide interconnection at the same rates, terms and conditions for new entrants as those enjoyed by NTT's competing units and by previous entrants that are similarly situated;
- c. Provide interconnection at rates that are cost-based, transparent, and non-discriminatory;
- d. Require NTT to disclose its network interface protocols for purposes of providing interconnection applicants information on what equipment can interoperate with NTT network equipment;
- e. Require NTT to provide interconnection within a reasonably short period after negotiations conclude, e.g., within 30 days;
- f. Require NTT to establish clear, public guidelines on terms and conditions for interconnecting with Type II carriers;
- g. Permit non-Japanese carriers to offer third-country calling, both out of and into Japan, from the public switched network, enabling customers in Japan to use U.S. carriers to call countries other than the United States and allowing calls via U.S. carriers into Japan from countries other than the United States;
- h. Permit international carriers besides KDD to negotiate third-country transit agreements with foreign carriers, rather than requiring the Japanese carriers to negotiate individual interconnection agreements for every foreign market they seek to serve, so as to permit non-KDD carriers to serve third countries using U.S. carriers as intermediaries;
- i. Immediately permit both ends of a leased line to connect with the public switched network, both domestically and internationally, rather than waiting until JFY 1997;

- j. Expand the use of "break out" service (connecting to a third country through the public switched network at one end of a leased line) beyond closed user groups, permitting connections with unaffiliated parties; and
- k. Ensure that interconnection costs are calculated on an incremental rather than average cost basis.

3. Transparency

- a. Make publicly available, and provide a fair opportunity for public comment on, all applications for licenses and other authorizations relating to the supply of basic telecommunications facilities and services. With respect to technical issues, the study of such issues should result in the use of truly international standards, where possible, and with respect to new standards, in standards that are openly licensed, which will better enable such standards to become international standards.

4. Telecommunications Licensing and Approval.

- a. Implement Article 10 of the Telecommunications Business Law so as to eliminate the need for MPT to approve or deny license requests by new carriers on the basis of MPT's estimate of market demand;
- b. Eliminate the requirement that applicants for Type I licenses submit detailed business plans;
- c. Eliminate the requirement that telephone and cable management firms obtain separate licenses for each franchise area they seek to serve so that one license is applicable nation-wide; and
- d. Eliminate the defacto requirement that Special Type II carriers obtain MPT approval through the registration process, and allow Special Type II businesses to operate on a notification basis, similar to General Type II businesses.

5. Cable TV

- a. Permit foreign nationals to sit on the board of directors of cable companies; and
- b. Publish transparent regulations on requirements for obtaining a cable television license, specifying the role of local authorities in the approval process.

L. TRANSPORTATION

1. Freight Transportation

a. Trucking

- i. Deregulate further the trucking freight rate notification system, including immediate elimination of the requirement for including a cost account statement with the notification;**
- ii. Create a nationwide trucking license system based on open entry;**
- iii. Remove immediately any district licensing requirements that specify a minimum number of vehicles that must be operated, i.e., a minimum fleet size;**
- iv. Remove immediately any district licensing requirements that specify prescribed amounts of terminal space, parking facilities and their maximum distance from the terminal, resting places (spaces) for couriers, and the prescribed size of maintenance facilities; and**
- v. Eliminate restrictions on pricing in the trucking sector in Japan and eliminate tariff filing.**

b. Freight Forwarding

- i. Allow international transportation companies serving Japan to obtain an Unrestricted Freight Forwarders license that would allow the international transportation company to conduct its own ground operations without the need to obtain trucking licenses from each district; and**
- ii. Eliminate restrictions on pricing in the freight forwarding sector and eliminate tariff filing.**

2. Maritime

- a. Abolish the current regulation requiring the mandatory weighing and measuring of all containerized cargo exported from Japan by one of two measuring associations (*Nippon Kaiji Kentei Kyokai* and *Shin Nihon Kentei Kyokai*);**

- b. Implement measures to improve the performance of harbor services on Sundays in Japanese ports and introduce a seven-day work schedule to eliminate restrictions and costly delays on the operations of both carriers and shippers;
- c. Deregulate harbor services and cease its restrictive use of licensing procedures, which effectively prevent new operators from entering terminals to compete with existing members of the Japan Harbor Transportation Association; and
- d. Simplify the requirements for "prior consultation" so that only major changes have to be notified to the Japan Harbor Transportation Association.

These issues are currently being pursued through the Federal Maritime Commission which has issued an Information Demand Order under Section 19 of the Merchant Marine Act and Section 1002 of the Foreign Shipping Practices Act.

3. Aircraft / Airports

- a. Helicopters
 - i. Harmonize day / night flight and instrument / visual flight rules with international norms.
- b. Airport / Heliport Construction and Upgrading
 - i. Eliminate regulations that prohibit or hinder airport and heliport construction or upgrading, such as increasing runway lengths and private aircraft parking areas.
- c. Seaplane Classification
 - i. Harmonize the requirements for seaplanes with those of other industrialized countries so as not to require seaplanes to meet requirements for both boats and aircraft.
- d. Pilot licensing
 - i. Eliminate regulations that effectively result in financially prohibitive domestic licensing procedures.

M. OTHER

The Government of the United States urges the Government of Japan to add additional sectors in the future to the Plan, as warranted by changing conditions.

IV. ADMINISTRATIVE REFORM

A. INFORMATION DISCLOSURE AND RETENTION

The increased transparency of laws, regulations and administrative actions can play an important role in reducing and avoiding disputes regarding trade and investment matters, and contribute to the creation and maintenance of a more certain and predictable business environment.

1. Information Disclosure Law -- The Government of Japan should submit to the Diet, by the end of JFY 1995, legislation for an information disclosure law that would provide the public with a right of access, enforceable in the courts, to records and other information in the possession or under the control of governmental entities, subject to specific and appropriate exemptions, the application of which would be reviewable by the courts.
2. Interagency Understanding on Information Disclosure -- Pending enactment of an information disclosure law, the Government of Japan should strengthen the "Interagency Understanding on the Criterion Applicable to Administrative Disclosure System," issued in December 1991, by:
 - a. Revising the Understanding and issuing it as a Cabinet Order; and
 - b. Instructing each ministry and agency covered by the Understanding to compile an annual report on the number and general subject matter of requests it receives and the documents it has disclosed under the Administrative Disclosure System.
3. Equal Access to Government Information -- The Government of Japan should ensure that foreign companies are accorded access to government information and regulatory processes on a basis that is, both legally and practicably, equal to the access of domestic companies and Japanese industry associations, regardless of whether the foreign companies are members of the association.

4. Full Transparency – The Government of Japan should ensure that all laws, cabinet orders, ministerial ordinances, notifications, circulars, directives, administrative guidelines and policies, including administrative guidance, are made publicly available in a prompt, transparent and readily accessible manner.
5. Information Retention – The Government of Japan should ensure that the National Tax Authority permits, by the end of JFY 1995, taxpayers to retain all tax records on microfilm for the entire seven-year period during which retention is required.

B. ADVISORY COMMITTEES AND STUDY GROUPS

The recent Cabinet Order aimed at enhancing the transparency and objectivity of *shingikai* is a positive first step by the Government of Japan in responding to concerns that the U.S. Government has raised repeatedly regarding formal and informal advisory committees, such as *shingikai*, *kenkyukai*, *kondankai* and *benkyokai*, which are organized to provide expert advice and recommendations to governmental entities. However, because of the discretion given to ministries in implementing the Order, the Order will not fully remedy the problems associated with *shingikai*. To more effectively enhance the transparency and objectivity of such advisory committees, the Government of Japan should issue a revised or new Cabinet Order that would:

1. Prohibit former and current governmental officials from serving as chairpersons of the *shingikai*, and substantially reduce the number of former governmental officials serving as members of *shingikai*;
2. Allow foreign non-governmental persons and foreign companies to participate either as members of *shingikai* or as observers at *shingikai* meetings;
3. Require all *shingikai* to publish adequate advance notice of their meetings; to open all of their meetings to the public, with exceptions allowed only in very exceptional, narrowly-defined cases; and make the minutes of their meetings readily and easily accessible to the public;
4. Impose the *shingikai* restrictions and requirements on *shingikai* subcommittees, as well as *kondankai*, *benkyokai* and *kenkyukai*;
5. Require full compliance by all ministries and their related entities with the new or revised Order by the end of JFY 1995; and
6. Publish an annual report, beginning at the end of JFY 1995, on the implementation of the requirements of the new or revised Order.

C. INDUSTRY ASSOCIATIONS

- 1. To ensure that all government entities support the efforts of the JFTC to prevent and eliminate anticompetitive activities by industry associations, the Government of Japan should refrain from delegating, formally or informally, governmental or public policy functions, such as product certifications or entry authorizations, to industry associations.**
- 2. Where there is a demonstrated need for industry associations to participate in granting permissions or approvals, establishing standards, issuing certifications or engaging in similar public or quasi-public functions, the relevant governmental entity should exercise adequate supervision over the association to ensure that its activities are conducted in an open, transparent and non-discriminatory manner and that it does not restrict the business activities of any firm, including firms that are not members of the association.**
- 3. The Government of Japan should ensure that regulations, guidelines and other procedures adopted or used by industry associations that may effect the conduct of business in Japan reflect the opinions of non-members, including the foreign business community.**
- 4. The Government of Japan should ensure that when government entities provide information to industry associations, the entities make the same information readily available to companies in that industry that are not members of the industry association.**

D. ADMINISTRATIVE REGULATIONS AND PROCEDURES

- 1. Rulemaking Procedures – The Government of Japan should adopt rulemaking procedures by the end of JFY 1996, which include:**
 - a. A requirement that prior to the adoption or issuance of cabinet orders, ministerial ordinances, notifications, circulars, directives and other forms of regulation, the relevant governmental entity publish the regulation and provide an opportunity for the public to comment on it, and that the entity take such comments into consideration in finalizing the regulation; and**
 - b. A requirement that before a government or quasi-governmental entity can issue administrative guidance to industry associations or to multiple persons, the entity must publish a draft of the guidance**

and provide an opportunity for the public to comment on the proposed guidance, and that the entity take such comments into consideration in finalizing the regulation.

2. The Administrative Procedure Law (APL)

- a. The Government of Japan should annually review and publish a report on the implementation of the APL, which includes the following:**
 - i. the extent to which governmental entities and officials are aware of and understand their obligations under the APL, and are fully and effectively implementing it;**
 - ii. the extent to which private sector entities and individuals, including industry associations and professional organizations, are aware of and understand their rights and the procedures available under the APL, and are fully and effectively utilizing the APL;**
 - iii. the extent to which governmental entities have issued administrative guidance in writing; and**
 - iv. the extent to which private sector entities and individuals have requested that oral administrative guidance be put in writing, and whether such requests have been fulfilled by the governmental entities; and**
- b. The Government of Japan should expand the APL's coverage to all entities that issue administrative guidance, including quasi-governmental entities.**

3. Administrative Guidance

- a. To further enhance the transparency of administrative guidance issued for multiple persons under Article 36 of the APL, the Government of Japan should:**
 - i. make widely available to the public, information on the subjects of such guidance and establish a process by which private entities and individuals can obtain a copy of the guidance upon request; and**

- ii. clarify that all administrative guidance that affects an industry at large is covered by Article 36 of the APL and is required to be issued in writing and made available to the public.

E. REVIEW OF ADMINISTRATIVE ACTIONS

The Government of Japan should strengthen existing mechanisms for the review and correction of administrative actions of governmental and quasi-governmental entities, in terms of their availability, speed and effectiveness. In addition, where appropriate, the Government of Japan should consider establishing new mechanisms to address disputes between private parties and governmental or quasi-governmental entities. To this end, the Government of Japan should:

1. Administrative Appeals Study -- Request the Administrative Reform Committee to establish a working group to prepare a report on the availability and effectiveness of existing review mechanisms to resolve complaints by private sector entities and individuals against governmental and quasi-governmental entities. The report should include an analysis of the operation and effectiveness of the Administrative Appeals Inquiries Law (*Gyosei fufuku shinsa ho*) (Law No. 160 of 1962) and the Administrative Case Litigation Law (*Gyosei jiken sosho ho*) (Law No. 139 of 1962, as amended).
2. Alternative Dispute Resolution (ADR) -- Establish an ADR mechanism that could be used in the resolution of disputes between private parties and governmental or quasi-governmental entities. The ADR mechanism should:
 - a. Serve as a forum to resolve disputes between governmental and quasi-governmental entities and private parties who would be substantially affected by a decision of an entity relating to an administrative approval, guidance or other action;
 - b. Be a voluntary procedure that supplements rather than limits other available dispute resolution techniques;
 - c. Involve neutral persons who function, with respect to an issue in controversy, specifically to aid the parties in resolving their dispute by serving as conciliators, facilitators, mediators or arbitrators;
 - d. Provide that any person serving as a conciliator, facilitator, mediator or arbitrator in a dispute have no official, financial or

personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve;

- e. Provide that decisions rendered by neutral persons serving as arbitrators be binding and enforceable on the parties to the dispute whenever the parties consent thereto;
 - f. Ensure appropriate protection (confidentiality) of communications between the parties and the neutral person serving as a conciliator, facilitator, mediator or arbitrator with the goal of fostering and promoting the use of the ADR mechanism within governmental and quasi-governmental entities; and
 - g. Be governed by published rules of procedure that adopt internationally recognized principles of due process and grant fair opportunities for private parties with an interest in the matter to present their arguments and supply evidence in support thereof.
3. The Office of Trade and Investment Ombudsman -- The Government of Japan should further strengthen the Office of Trade and Investment Ombudsman.
4. Product Liability Law and Claims

With regard to the new Product Liability Law, on October 26, 1994, MITI issued a notification entitled "Guidelines on the Establishment of an Alternative Dispute Resolution Mechanism (ADRM) for Product Claims" to various industry associations. The Notification encourages the industry associations to establish centers to handle product liability claims. At least nine centers have been established. These centers raise serious concerns, including the following:

- a. The ADRM process appears to lack transparency, neutrality and objectivity because the centers are established, funded and operated by industry associations, rather than by independent organizations;
- b. Consumers with product liability claims lack access to government information about defective products, which underscores the importance of Japan's early adoption of an information disclosure law;

- c. Consumers with product liability claims may not have access to manufacturer or industry information that would be necessary to prove their product liability claims; and
- d. Consumers may be discouraged, if not actually prevented, from taking their product liability claims directly to the courts, without resorting to the ADRM's, and may even be discouraged from pursuing a claim in the ADRM's because of the cost and the perception that the process favors the manufacturer.

F. RESOLUTION OF PRIVATE COMMERCIAL DISPUTES

Timely and effective procedures, such as arbitration and other alternative dispute resolution mechanisms for the resolution of private commercial disputes between private parties, can contribute to growth in trade and investment and reduce disputes that need to be resolved at the government-to-government level. Accordingly, the Government of Japan should:

- 1. Facilitate and encourage the use of such procedures in the resolution of disputes involving foreign parties;
- 2. Enhance mechanisms for arbitration of private disputes between foreign and domestic parties by encouraging the Japan Commercial Arbitration Association to improve its rules and procedures; and
- 3. Amend or replace its arbitration law to facilitate greater use of arbitration in Japan.

V. COMPETITION POLICY

In order to ensure that anticompetitive private practices are not used to stifle the positive effects of deregulation, the Government of Japan should strengthen Antimonopoly Act enforcement as follows:

A. STRENGTHEN THE STRUCTURE AND ORGANIZATION OF THE JFTC

- 1. Increase the Number of JFTC personnel
 - a. Increase the number of JFTC personnel to a level commensurate with Japan's position as one of the largest economies in the world.

This would require an increase of at least 200 persons by JFY 1998, with an increase of at least 18 persons for JFY 1996;

- b. Allot the greatest portion of the staff increases to the offices that engage in investigations of Antimonopoly Act (AMA) violations; and
- c. Increase the number of personnel in the offices responsible for monitoring and acting against monopolistic situations.

2. Upgrade the status of the JFTC to a General Administrative Agency (*jimu-sokyoku*)

- a. Upgrade of status of the JFTC to the level of a General Administrative Agency (*jimu-sokyoku*).
- b. Authorize the creation of four Bureaus (*kyoku*) within the JFTC -- Examination Bureau, Economic and Trade Practices Bureau, Competition Policy Bureau, and Secretariat; and
- c. Authorize the creation of new investigatory sections for the JFTC's main office and for its local offices, and the establishment of a new Special Investigation Department within the Examination Bureau.

B. ENHANCE THE JFTC'S INVESTIGATORY AND ENFORCEMENT POWERS

1. Bolster the JFTC's Enforcement Powers

Amend AMA §7(2) to authorize the taking of elimination measures against unreasonable restraints of trade and private monopolization within three years of the date of the last act in furtherance of the AMA violation;

2. Strengthen the JFTC's Investigative Powers

- a. Amend AMA §94-2 to increase to 5 million yen the maximum criminal fine for the submission of false or incomplete information to the JFTC in response to a compulsory request for information pursuant to §§40 or 46; and
- b. Amend AMA §92-2 to include the submission of intentionally false statements to the JFTC in response to requests for information pursuant to §§40 or 46, and the intentional destruction of documents to avoid compliance with such requests, so that such activities are also punishable by penal servitude of not less than three months and not more than ten years.

3. Enhance the JFTC's Enforcement Against Individuals

- a. Announce that the JFTC will now issue recommendations and appropriate orders against officers or employees of industry associations, and of their member firms, that engage in or assist in conduct on behalf of such industry associations or member firms that violate the AMA;
- b. Amend the AMA §2(1) or other appropriate sections to make clear that the JFTC is authorized to take elimination measures and issue other appropriate decisions and orders against officers, employees or agents of an entrepreneur that engage in or assist in conduct on behalf of that entrepreneur that violates the AMA; and
- c. Increase significantly the number of cases in which the JFTC files criminal accusations pursuant to the AMA §96.

4. Strengthen JFTC Remedial Powers against Anticompetitive Market Situations and Structures

- a. Announce that the JFTC will apply more actively the provisions of the AMA that address monopolistic situations (§ 8-4); and
- b. Establish a blue-ribbon study group to examine and make recommendations by the end of JFY 1995 on whether improvements are needed in the JFTC's powers and/or enforcement policy to address anticompetitive market situations and structures within the Japanese economy.

C. PREVENT ANTICOMPETITIVE PRACTICES BY TRADE ASSOCIATIONS

1. Strengthen the JFTC's Trade Association Guidelines

The Japan Fair Trade Commission should fully promulgate and enforce Antimonopoly Guidelines Concerning the Activities of Trade Associations announced on October 30, 1995, and make clear that the following conduct by industry associations or their members is unlawful:

- a. Causing members to deal on exclusive terms;
- b. Pressuring members or distributors of members to refrain from dealing with non-members;

- c. Formulating black lists;
- d. Pressuring members to restrict supplies to specified individual or classes of firms;
- e. Restricting membership in the association or in participation in internal management meetings of the association in a discriminatory manner;
- f. Failing to conduct standards and certification development and implementation procedures in an open, transparent and non-discriminatory manner; and
- g. Treating non-members in a discriminatory manner with respect to obtaining access to competitively-necessary association functions, including limiting access to information provided by government agencies.

2. Augment GOJ Efforts to Eliminate Anticompetitive Activities by Trade Associations

Ensure that all government agencies support the efforts of the JFTC in preventing and eliminating anticompetitive activities by industry associations. In particular, these agencies should report suspected infractions of the AMA by trade associations to the JFTC, and refrain from issuing guidance or otherwise encouraging industry associations or their members to engage in conduct that contravenes the AMA.

D. STRENGTHEN COORDINATION BETWEEN THE JFTC AND OTHER MINISTRIES ON PROPOSED ADMINISTRATIVE GUIDANCE

Implement the Deregulation Action Program commitment to ensure that regulations are not replaced by administrative guidance that restricts competition by establishing, through the Cabinet Secretariat or other appropriate body, an administrative mechanism for coordination between government agencies and the JFTC on proposed administrative guidance, and a procedure for evaluating whether government agencies are following such an advance coordination mechanism.

E. ELIMINATE ANTIMONOPOLY EXEMPTIONS

- 1. Review all exemptions from the Antimonopoly Act contained in the Antimonopoly Exemption Act by the end of 1996, with a view to eliminating those exemptions by the end of JFY 1998.

2. Review all antimonopoly exemptions for retail price maintenance with a view to eliminating all such exemptions by the end of 1998.

F. INCREASE EFFORTS TO ELIMINATE *DANGO*

1. Enhance Legal Remedies Against Bid Rigging

- a. Enact legislation that would require all bids on publicly-funded procurements to be accompanied by a Certificate of Non-Collusion, signed by the president of the bidding company, stating that (i) the bid was arrived at independently without any consultation, communication or agreement with any other bidder as to the terms of the bid, and (ii) there was no consultation, communication or agreement with any actual or potential bidder as to whether either party would or would not submit a bid; and
- b. Revise the Penal Code to make it a crime, punishable by imprisonment of at least three months and no more than ten years, for any person to submit a false Certificate of Non-Collusion.

2. Increase Administrative Sanctions Against *Dango*

- a. Increase to 12 months the minimum period that companies found to have participated in bid rigging activities will be suspended from bidding on all publicly-funded procurements;
- b. Apply such suspensions from bidding to procurements occurring anywhere in Japan, not just the prefecture where the previous *dango* activities took place; and
- c. Require firms found to have engaged in *dango* activities on publicly-funded procurements to repay the Government its proportionate share of the damages incurred by the Government as a result of the bid rigging before it may submit bids on future publicly-funded procurements.

3. Establish a *Dango* Hotline

Establish within the National Police Agency a bid rigging investigation office and a national anti-bid rigging telephone hotline where persons can report suspected *dango* activities.

G. ELIMINATE INTERNATIONAL CONTRACT NOTIFICATION REQUIREMENTS

Eliminate by the beginning of JFY 1996 any JFTC notification requirements for

international joint ventures that are broader than those required for domestic joint ventures.

H. IMPROVE PRIVATE REMEDIES AGAINST ANTIMONOPOLY VIOLATORS

1. Permit Damage Actions on the Basis of JFTC Surcharges

Amend section 25 of the AMA to permit injured parties to file damage actions where the JFTC issues a surcharge order against the defendant.

2. Permit Injunctions in Antimonopoly Damage Actions

Amend the AMA to authorize courts in section 25 damage actions to order persons to stop engaging in conduct that violates the AMA.

3. Subject Trade Associations to Damage Liability

Amend the AMA to make industry associations jointly and severally liable for damages caused by any conduct it participated in that the JFTC has determined violated section 8 of the AMA.

4. Ease the Filing Fees for AMA Damage Actions

Submit legislation to the Diet that would apply the same filing fee to damage actions based on antimonopoly violations as is applied to shareholder derivative suits.

5. Ease the Burdens on Victims to Recover Damages Against Antimonopoly Violators

Amend AMA §25 to provide that in civil damage actions based on alleged Antimonopoly Act violations, whether filed under the AMA or section 709 of the Civil Code:

- a. Any conduct that the JFTC has determined, through a recommendation, recommendation decision or hearing decision, violated the AMA will be rebuttably presumed to have caused injury to direct purchaser plaintiffs and to have unreasonably restrained trade;
- b. Proof that the antimonopoly violation was a material cause of the plaintiff's injury will be sufficient to recover damages. The plaintiff will not be required to demonstrate that there were no other sources of injury other than the unlawful conduct;

- c. Where a defendant has information in its possession that is relevant to proof of damages or the causal connection between the AMA violation and the alleged damages, the defendant, upon the court's determination that a prima facie case has been established that defendant has violated the AMA, will have an obligation to submit that evidence to the court. If the defendant fails to provide that evidence to the court, the court will be entitled to make inferences adverse to that defendant with respect to proof of such matters;
- d. Where the court concludes that there is a causal connection between the AMA violation and injury suffered by the plaintiff, the plaintiff shall be entitled to prove, under a lesser burden than the fact that it was damaged, the losses it has suffered as a result of the unlawful conduct; and
- e. A court may determine the amount of damages suffered by the plaintiff through a just and reasonable estimate based on any of the following:
 - i. direct evidence;
 - ii. data, statistical analyses and/or other indirect evidence that permit inferences of such damages; or
 - iii. (a) where the AMA violation involved an increase in the price of goods or services, the profit earned by the defendant on the illegally-priced sales of products ultimately purchased by the plaintiff; or

(b) where the AMA violation excludes or exploits a competitor, the profits earned by the defendant on sales that would otherwise have been made by the plaintiff.